

BEFORE THE DEPARTMENT
OF NATURAL RESOURCES AND CONSERVATION
OF THE STATE OF MONTANA

* * * * *

IN THE MATTER OF THE APPLICATION)	
FOR BENEFICIAL WATER USE PERMIT)	FINAL ORDER
NO. 27726-s76F BY EDWARD R. AND)	
HELEN J. PREVOL)	

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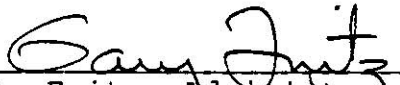
There being no exceptions or objections to the Proposal for Decision entered in this matter on January 12, 1982, the same is hereby made final and is expressly incorporated herein.

WHEREFORE, Application for Beneficial Water Use Permit No. 27726-s76F by Edward R. and Helen J. Prevot is hereby denied and dismissed in its entirety without prejudice to said Applicants to reapply for a water use permit at some subsequent time.


NOTICE

The Department's Final Order may be appealed in accordance with the Montana Administrative Procedures Act by filing a petition in the appropriate court within thirty (30) days after service of the Final Order.

DONE this 28th day of January, 1982.



Gary Fritz, Administrator
Department of Natural
Resources and Conservation
32 S. Ewing, Helena, MT
(406) 449 - 2872



Matt Williams, Hearing Examiner
Department of Natural Resources
and Conservation
32 S. Ewing, Helena, MT 59620
(406) 449 - 3962

1 BEFORE THE DEPARTMENT OF
2 NATURAL RESOURCES AND CONSERVATION
3 OF THE STATE OF MONTANA

4 IN THE MATTER OF THE APPLICATION FOR)
5 BENEFICIAL WATER USE PERMIT NO.)
6 27726-s76F BY EDWARD R. AND HELEN J.)
7 PREVOL)
8 ORDER

9 On November 18, 1981, the Applicants in the above-
10 entitled matter advised the Department they would be unable
11 to appear at the hearing previously set in this matter. The
12 Applicants further advised they wished postponement until the
13 summer of 1982.

14 In passing on this request for extension, it is well
15 to note that the Montana Water Use Act which governs new water
16 use permits implicitly adopts the common law notion of an
17 inchoate water right. The water use permit merely licenses
18 the prospective appropriator to initiate his appropriation.
19 Nothing in the statutes undermines or disturbs the well-established
20 proposition that actual application of water to beneficial use
21 or at least completion of the diversion works therefore is a
22 prerequisite for a fully perfected appropriation. See generally,
23 Bailey v. Tintinger, 45 Mont. 154, 122 P. 575 (1912), Clausen v.
24 Armington, 123 Mont. 1, 212 P.2d 440 (1949). Thus, MCA 85-2-315(1)
25 (1979), provides for the certificate of water right upon the
26 completion of an appropriation according to the terms of the
27 water use permit.
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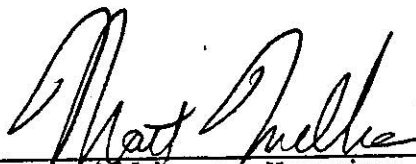
1 Persons proceeding with reasonable diligence in the
2 completion of their appropriation as provided for in their
3 permit are entitled to have that appropriation relate back to
4 the priority date of the initiation of their appropriative
5 claim evidenced by the filing of the application. However,
6 proceeding with reasonable diligence in the development of the
7 water and the pursuit of the permit is the talisman of the
8 privilege of relating the completed appropriation back to
9 the initiation of the same. Therefore, it is evident that an
10 applicant may not postpone hearings indefinitely and maintain
11 the priority date of the application for a new water use
12 permit.

13
14 MCA 85-2-310 (1979) provides that "(t)he Department
15 may cease action upon an application for a permit and return
16 it to the applicant when it finds that the application is not
17 in good faith or does not show a bona fide intent to appropriate
18 water for a beneficial use." The Applicants have at this time
19 failed to justify delay until the summer of 1982 for the hearing
20 in this matter.

21
22 WHEREFORE, Applicants are hereby directed to submit to
23 this Department within ten (10) days of receipt of this Order
24 affidavits detailing specifically the reasons or causes for
25 delaying this matter until the summer of 1982 and the basis for
26 and facts indicating that they remain with a bona fide intent
27 to appropriate water. Failure to file such affidavits will
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1 result in the dismissal of this application. In the latter
2 event, the Applicants may reapply to the Department for a new
3 water use permit at such time as they are able and intend to
4 expeditiously pursue their appropriation.

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6 DONE this 19th day of November, 1981.

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11 Matt Williams, Hearing Examiner
12 Department of Natural Resources
13 and Conservation
14 32 S. Ewing, Helena, MT 59620
15 (406) 449-3962
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28 MW:bj

CASE # 27726

BEFORE THE DEPARTMENT OF
NATURAL RESOURCES AND CONSERVATION
OF THE STATE OF MONTANA

* * * * *

IN THE MATTER OF THE APPLICATION)
FOR BENEFICIAL WATER USE PERMIT)
NO. 27726-S76P BY EDWARD R. AND)
HELEN J. PREVOL)

PROPOSAL FOR DECISION

* * * * *


By order of November 19, 1981, the Applicants in the above-entitled matter were accorded ten (10) days from receipt of said order to file affidavits detailing specifically the reasons or causes for delaying this matter until the summer of 1982. To date, the Applicants have not responded to this order, nor have they otherwise indicated their intent to proceed with reasonable diligence in the prosecution of this application. This failure warrants dismissal of the present application, without prejudice to the Applicants to reapply for another water use permit at such time that they are with the capacity to proceed diligently with the application process.

WHEREFORE, Application for Beneficial Water Use Permit No. 27726-S76P by Edward R. and Helen J. Prevot is hereby denied and dismissed in its entirety without prejudice to said Applicants to reapply for a water use permit at subsequent time.

NOTICE

This Proposal for Decision is offered for the review and comment of all parties of record. Comments and objections must be filed with and received by the Department of Natural Resources and Conservation on or before January 29, 1982.

DONE this 12th day of January, 1982.


Matthew Williams, Hearing Examiner
Department of Natural Resources
and Conservation
32 S. Ewing, Helena, MT 59620
(406) 449 - 3962

CASE # 277262

AFFIDAVIT OF SERVICE

Proposal for Decision

STATE OF MONTANA)

) ss.

County of Lewis and Clark)

Beverly J. Jones, an employee of the Montana Department of Natural Resources and Conservation, being duly sworn on oath, deposes and says: That pursuant to the requirements of Section 85-2-309, MCA, on January 14, 1981, he deposited in the United States mail, "certified mail", an Order by the Department on the application by Edward & Helen Prevot, Application No. 27726-s76F, for a Permit to Appropriate Water, addressed to each of the following persons or agencies:

1. Edward and Helen Prevot, 2056 Vera Land, Escondido, CA 92026
2. Terry Smith, Ovando, MT 59854
3. Roy C. Krutar, P. O. Box 76, Ovando, MT 59854
4. T. J. Reynolds, Helena Field Office (regular inter-department mail)
5. Matt Williams, Hearing Examiner, DNRC, Helena (hand deliver)

DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

STATE OF MONTANA)

by Beverly J. Jones

) ss.

County of Lewis & Clark)

On this 14th day of January, 1981, before me, a Notary Public in and for said State, personally appeared Beverly J. Jones, known to me to be the Hearing Recorder, of the Department that executed this instrument or the persons who executed the instrument on behalf of said Department, and acknowledged to me that such Department executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.

John P. Gilman

Notary Public for the State of Montana

Residing at Helena, MT

My Commission Expires 1/21/84

CASE # 27726